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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

Central Secretariat
Govt. of

LOK SABHA

The following Bill was introduced in Lok Sabha on the 16th August, 1974:—

BILL No. 82 OF 1974

A Bill to provide, in the interests of national economic development, for temporary restrictions on the power of certain companies to declare dividends out of profits and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Companies (Temporary Restrictions on Dividends) Act, 1974.

(*2*) It extends to the whole of India.

(*3*) It shall be deemed to have come into force on the 6th day of July, 1974.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "appointed day" means the 6th day of July, 1974;

(*b*) "company" has the meaning assigned to it in the Companies Act, 1956, and includes a foreign company within the meaning of

1 of 1956.

section 591 of the Companies Act, 1956, which has made arrangements prescribed under the Income-tax Act, 1961, for the declaration and payment of dividends within India; 43 of 1961.

(c) "distributable profits", in relation to a company to which this Act applies, means,—

(i) one-third of the net profits of the company, or

(ii) an amount required to pay twelve per cent. dividend on the face value of the equity shares of the company and dividend payable on its preference shares,

whichever is lower;

(d) "financial year" has the meaning assigned to it in section 2 of the Companies Act, 1956; 1 of 1956.

(e) "net profits" means net profits of the company as computed in accordance with the provisions of section 349 of the Companies Act, 1956, subject to the modification that— 1 of 1956.

(i) any income-tax payable under the Income-tax Act, 1961, in respect of the profits as so computed or any tax of a similar character payable in respect of such profits under any law in force in any country outside India, and surtax payable in respect of such profits under the Companies (Profits) Surtax Act, 1964, shall also be deducted; and 43 of 1961, 7 of 1964.

(ii) depreciation shall be provided in accordance with the provisions of section 205 of the Companies Act, 1956; 1 of 1956.

(f) "previous year" and "total income" have the meanings respectively assigned to them in the Income-tax Act, 1961. 43 of 1961.

Companies to which the Act applies.

3. This Act shall apply to the following categories of companies, namely:—

(a) a company in which the public are substantially interested, as defined in clause (18) of section 2 of the Income-tax Act, 1961; 43 of 1961.

(b) a company, at least seventy-five per cent. of the share capital of which is, throughout the financial year for which any dividend is declared or paid, beneficially held by an institution or fund established in India for a charitable purpose, the income from dividend whereof is exempt from income-tax under section 11 of the Income-tax Act, 1961; 43 of 1961.

(c) an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power;

(d) an Indian company, the value of whose capital assets, being machinery or plant (other than office appliances or road transport vehicles), as shown in its books on the last day of the financial year for which any dividend is declared or paid, is fifty lakhs of rupees or more;

43 of 1961.

(*e*) a company which has been exempted under sub-section (*3*) of section 104 of the Income-tax Act, 1961, from the operation of that section.

Explanation I.—For the purpose of clause (*c*), the business of a company shall be deemed to consist mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power, if the income attributable to any of the aforesaid activities included in its gross total income for the relevant financial year is not less than fifty-one per cent. of such total income.

Explanation II.—For the purposes of clauses (*c*) and (*d*), "Indian company" has the meaning assigned to it in clause (*26*) of section 2 of the Income-tax Act, 1961, but shall not include a corporation established by or under a Central, State or Provincial Act.

43 of 1961.

Restriction on declaration of dividends by companies to which the Act applies.

4. (*1*) For a period of two years from the appointed day, no company to which this Act applies shall declare or pay dividends for any financial year except out of the profits of the company for that financial year and no such dividend shall exceed, in the aggregate, the distributable profits of the company for that financial year:

Provided that nothing in this sub-section shall apply to any dividend which was declared and paid, before the appointed day, to a section of the shareholders of a company but was not paid, before the appointed day, to another section of the shareholders of that company.

(*2*) In computing the aggregate amount which may be declared or paid by a company to which this Act applies as dividends in accordance with the provisions of this Act, for any financial year, any amount paid or promised or partly paid and partly promised by the company before the appointed day by way of interim dividends for that financial year shall be taken into account; but where the amount of the interim dividend paid by the company before the appointed day exceeds its distributable profits for the financial year for which the interim dividend was paid, no further dividend shall be declared or paid by the company for that financial year.

Dividend in excess of distributable profits to be void and to be recovered.

5. For a period of two years from the appointed day, any dividend declared or paid after the appointed day by a company to which this Act applies, in excess of its distributable profits for a financial year shall, to the extent of such excess, be void, and any amount paid by the company to any shareholder in excess of its distributable profits for that year shall be recovered by the company and no such recovery shall be waived by the company:

Provided that where any such recovery is not practicable, the amount of dividend to the extent of such excess shall be adjusted against the dividend payable for the financial year next following the financial year for which such excess payment of dividend was made.

Restriction on interim dividends.

6. For a period of two years from the appointed day, no company to which this Act applies shall, except with the previous approval of the Central Government and subject to such conditions and limitations as may be specified by that Government, pay or distribute any interim dividends for any financial year, whether ending before or after the appointed day.

Restrictions on other distribution.

7. For a period of two years from the appointed day, no company to which this Act applies shall, except with the previous approval of the Central Government, by general or special order,—

(*a*) make any distribution out of its assets;

(*b*) assume, whether conditionally or otherwise, any obligation to make distribution out of its assets;

(*c*) grant any loan to any shareholder of the company:

Provided that nothing in clause (*c*) shall apply to a company which is declared by the Central Government under sub-section (*1*) of section 620A of the Companies Act, 1956, to be a *Nidhi* or Mutual Benefit Society. 1 of 1956.

Act to have overriding effect.

8. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Companies Act, 1956, or in any other enactment (other than this Act) or in any contract or instrument having effect by virtue of any enactment other than this Act. 1 of 1956.

Penalties.

9. (*1*) Whoever contravenes any provision of this Act, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to twice the amount in relation to which such contravention has been made, or with both.

(*2*) The provisions of section 621 of the Companies Act, 1956, shall apply to the offences against this Act as they apply to the offences against the Companies Act, 1956. 1 of 1956.

Offences.

10. (*1*) Where an offence against this Act has been committed, every person who at the time the offence was committed was in charge of, and was responsible to, the company committing the offence for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where any offence against this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Power to delegate.

11. The Central Government may, by notification in the Official Gazette, direct that any power which may be exercised by it under this Act (other than the power conferred by section 12) shall, subject to such restrictions and conditions, if any, as it may specify in the notification, be exercised also by—

(*a*) such officer or authority subordinate to the Central Government; or

(*b*) such other authority,

as may be specified in the notification.

Power to make rules

12. (*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and it, before the expiry of the session or in two or more successive session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Act not to apply to companies in liquidation.

13. Nothing in this Act shall apply to a company which is being wound up by the Court or voluntarily or subject to the supervision of the Court.

Section 637A of Act 1 of 1956 to apply.

14. Every approval referred to in this Act shall be obtained on an application made to the Central Government and the provisions of section 637A of the Companies Act, 1956, shall apply to every such application as if such application were an application under the Companies Act, 1956.

Power to remove difficulties.

15. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty.

Repeal and saving.

16. (1) The Companies (Temporary Restrictions on Dividends) Ordinance, 1974, and the Companies (Temporary Restrictions on Dividends) Amendment Ordinance, 1974, are hereby repealed.

7 of 1974.
9 of 1974.

(2) Notwithstanding such repeal, anything done or any action taken under the Companies (Temporary Restrictions on Dividends) Ordinance, 1974, as amended by the Companies (Temporary Restrictions on Dividends) Amendment Ordinance, 1974 (including any order or declaration made thereunder), shall be deemed to have been done or taken under the corresponding provisions of this Act.

7 of 1974.
9 of 1974.

STATEMENT OF OBJECTS AND REASONS

In recent months the wholesale price index as well as the consumer price index has been advancing rapidly. The steep increase in prices has hit all sections of the community, particularly the weaker sections, very hard part from imposing serious financial strains on the Central and State Governments. In order to deal urgently and effectively with the mounting pressure of inflation, it become necessary for Government to take a number of measures. As part of these measures, the President promulgated the Companies (Temporary Restrictions on Dividends) Ordinance, 1974 on 6th July, 1974. The Ordinance imposed temporary restrictions on the distribution of dividends by companies, thereby seeking to curb consumer spending and promote savings in the economy.

The Bill seeks to replace the above Ordinance as amended by the Ordinance promulgated by the President on the 15th July, 1974, with certain modifications.

NEW DELHI; Y. B. CHAVAN.

The 9th August, 1974.

FINANCIAL MEMORANDUM

There is no particular clause in the Bill, which, if enacted, would involve expenditure from the Consolidated Fund of India. But in the administration of the provisions of the Act, which will be done by the Department of Company Affairs, some additional staff will be needed, and such additional staff is likely to entail a recurring expenditure of Rs. 1,27,400 per annum, provision for which will be made in the budget of the Department of Company Affairs.

The Bill, if enacted would not involve any non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 1 of the Bill empowers the Central Government to delegate by notification its powers to any officer or authority.

2. Clause 12 of the Bill empowers the Central Government to make rules to carry out the provisions of the Act.

3. Clause 15 of the Bill confers powers on the Central Government to make orders, not inconsistent with the provisions of the Bill, if enacted, to remove difficulties.

4. The matters in relation to which such delegation of power may be made or the matters in relation to which rules may be made, or the matters in relation to which difficulties may be removed, are matters of administrative detail and it is hardly possible to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

S. L. SHAKDHER.
Secretary-General.